

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7043 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHAUHAN CHIMANSINH BHARATSINH

Versus

STATE OF GUJARAT

Appearance:

MS SR SHAH for Petitioners

MS PS PARMAR for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/06/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner No.1 was appointed under the order dated 16th June 1980 of respondent No.2 on work charge and temporary basis. The petitioners No.2 to 5 were appointed on different dates in the year 1980-81, but their subsequent appointments and extensions were made by common order. This appointment of petitioners was

continued till 15th October 1980. Then the petitioners were again given appointment on work charge temporary basis on 15th June 1981 by respondent No.2 which lasted till 15th October 1981. So there is a gap of about eight months in between first and second appointment. Third time, the petitioners were given appointment under the order dated 16th June 1982 of respondent No.2 and it has also come to an end on 15th October 1982. So once again there is a gap of eight months in between second and third appointment. Then the petitioners were given appointment for the period from 16th June 1983 to 15th October 1983 on the work charge temporary basis. This time, the term of appointment was extended till 28th February 1984. So it is a case of temporary appointment for fixed term and it comes to an end by efflux of time. It is true that after 28th February 1984, the petitioners were continued in service on the basis of fixed term appointments given for 29 days and their services came to be terminated under the order dated 2nd December 1985, but the fact remains that all the appointments were only on work charge temporary basis for a fixed term, which does not confer any right upon the petitioners to continue to hold the posts.

3. It is a settled law that a temporary government servant does not become permanent unless he/she acquires that capacity by force of any Rule or is declared as permanent servant. Reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of *Madhya Pradesh Hasta Shilpa Vikas Nigam v. Devendra Kumar & Ors.*, reported in JT 1995(1) SC 198. The Division Bench of this Court (Coram: B.N.Kirpal, C.J. (as he then was) & H.L. Gokhale, J.), in the case of *Bhanmati Tapubhai Muliya v. State of Gujarat*, reported in 1995(2) GLH 228, has held that the temporary appointment which has been made for a fixed term comes to an end by efflux of time. In such cases, even the order of termination is not required to be made. It is also a case where the petitioners were appointed, as stated earlier, only on work charge temporary basis for fixed term and that appointment comes to an end automatically. The petitioners have no right to continue in the employment on the basis of their temporary appointment. Much emphasis has been laid on the ground that the petitioners have completed 240 days in twelve calendar months preceding the date of termination of their services, and as such, compliance of provisions under Section 25F of the Industrial Disputes Act, should have been made. It is suffice to say that it is a case of fixed term temporary appointment and the term of appointment has come to an end by efflux of time.

Moreover, the matter pertains to the services in the Government Department and as such the recruitment and other service conditions are being regulated either under the Rules framed under Article 309 or Article 162 of the Constitution and as such, the service conditions are regulated under the Rules. Moreover it is a question of fact whether the petitioners have completed 240 days or not. Last but not least, if the petitioners are claiming benefits of provisions of Section 25F of the Industrial Disputes Act, then the appropriate course for the petitioners would have been to approach Labour Court and not this Court, but they have chosen to approach this Court and as such, the validity of the order of termination has to be considered with reference to the provisions under the Constitution of India and with reference to legal rights. As stated earlier, a temporary Government servant does not acquire any right to hold the post and as such none of the legal and fundamental rights of the petitioners are infringed.

4. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacate. No order as to costs.

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